Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-2024

URBATEC, a California corporation,

Petitioner,

vs.

YUMA COUNTY, an Arizona County,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Constitutional Provisions and Statutes Involved	3
Statement of the Case	4
Reasons for Granting the Writ	8
Conclusion	21
APPENDIX	
Opinion of Court of Appeals	Appendix 1
Order of Court of Appeals	Appendix 13

AUTHORITIES CITED

Cases: Page

Cuyahoga Metropolitan Housing Auth. vs. City of Cleveland, 474 F.2d 1102 (6th Cir., 1973) 10

Electric Construction Company vs. Flickinger 107 Ariz. 222, 485 P.2d 547 U.S. Cert. denied in 404 U.S. 952 (1971) 16

Hunt vs. Douglas Lumber Co. 41 Ariz.

276 P.2d 815 (1933) 14
Miller vs. Arkansas 353 U.S. 187,
1 LEd 2d 231, 77 S.Ct. 257
(1956).....14, 15, 16, 17
Miller vs. Superior Court in and for
the County of Pima, 8 Ariz. App. 420,
466 P.2d 699 (1968) 19
Nothen vs. Elledge 72 Ariz. 166,
232 P.2d 111 (1951) 14
Polar Ice Cream vs. Andrews, 375
U.S. 361, 111 LEd 2d 389, 84
S.Ct. 378..... 21
Public Utilities Commission of State
of California vs. United States,
355 U.S. 534, 78 S.Ct. 446, 2LEd
2d 470 (1958) 14
Ray vs. Atlantic Richfield Company
435 U.S. 151, 55 LEd 2d 179, 98
S.Ct. 988 (1978) 17
Sperry vs. Florida 373 U.S. 379,
10 LEd 2d 428, 83 S.Ct. 1322
(1963), ... 20
Westinghouse Electric Corporation
vs. Rhodes, 97 Ariz. 81, 397
P.2d 61 (1964)..... 20

United States Constitution Cited Page

Article VI..... 3
Article I §8..... 3

Federal Statues Page

28 U.S.C. § 1254 (1)..... 2
42 U.S.C. § 1401..... 10
42 U.S.C. § 3531..... 11
42 U.S.C. § 3534(a)..... 11

State Statues Page

Ariz. Rev. Stat. § 32-1151..... 4, 10
Ariz. Rev. Stat. § 32-1122(B).... 4,10,20

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1979

No._____

URBATEC, a California corporation,
Petitioner,
v.
YUMA COUNTY, an Arizona County,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petitioner Urbatec, a California corporation, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Ninth Circuit entered in the above case on January 14, 1980.

OPINIONS BELOW

The Opinion of the Court of Appeals for the Ninth Circuit is reported at 614 F.2d 1216. There is no opinion for the

District Court for the District of Arizona.

JURISDICTION

The judgment of the Court of Appeal, set forth in the Appendix hereto at pp. 1-12 reversing the District Court was entered on January 14, 1980; and the order denying Petitioner's request for a rehearing and/or a rehearing en banc set forth in the Appendix hereto at pp. 13-14 was entered on March 24, 1980.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

Does the ruling of the court below that holds that a building contractor licensed in California must first be licensed in Arizona before it could submit a proposal to develop and construct federally subsidized housing in Yuma, Arizona, under the Federal housing laws and under the comprehensive regulations and guidelines of the Department of Housing and Urban Development ("HUD") constitute error in

that it conflicts with federal law and regulations in the area of developing federal housing and, thus, does the court's ruling violate the Supremacy Clause and the Commerce Clause of the United States Constitution?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional Provisions involved are : (1) the Supremacy Clause of the United States Constitution which states in Article VI: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." and (2) the Commerce Clause, which states in Article I §8: "The Congress shall have Power. . .to regulate Commerce. . .among the several States. . ."

The Statutes involved are:

1. Ariz. Rev. Stat. § 32-1151 which provides in pertinent part: "It is unlawful for a person, firm, partnership, corporation, association or other organization, or a combination of any of them, to engage in the business, act or offer to act in the capacity, or purport to have the capacity of a contractor without having his own license in his own name therefor as provided in this chapter, unless the person, firm, partnership, corporation, association or other organization is exempt as provided in this chapter.", and

2. Ariz. Rev. Stat. § 32-1122(B) which provides in pertinent part: "[A license applicant] . . . shall not have engaged in the contracting business nor shall he have submitted a bid within one year prior to making the application on any contracting work without first having been issued a license as required by this chapter."

STATEMENT OF THE CASE

On April 27, 1972, the City of Yuma,

Arizona, passed a Resolution recognizing a shortage of housing for low-income people in Yuma and soliciting HUD to provide every assistance available "on behalf of this request for said urgently needed housing. . ." (R 59)

On May 1, 1972, the Board of Supervisors of the County of Yuma, Arizona passed a resolution stating, inter alia, (1) that there is a need for low-rent housing to meet needs not adequately met by private enterprise, (2) that the Executive Director of its Housing Authority shall apply to HUD for 120 units of low-rent public housing to be provided by new construction by the Turnkey method, and (3) that it would comply with the requirements and regulations of HUD. (R 59-60)

The Housing Authority ("The Authority"), pursuant to HUD regulations and guidelines, advertized on May 2, 1972 its invitation to developers and sent invitations to developers to submit proposals for the development of said 120 units pursuant to HUD regulations. (R 60)

Petitioner is a California corporation specializing in the development of low-

rent housing under the federal housing laws. It is licensed as a contractor in California. Petitioner responded to said invitation to submit proposals and its proposal was approved by The Authority from among five competing proposals on May 31, 1972. (R 60) Petitioner's proposal consisted of specific sites for the project to be purchased by Petitioner as well as design and cost elements. (R 60) On June 5, 1972, HUD further approved Petitioner as the developer and approved Urbatec's proposal. (R 61) Said approvals were subject to certain conditions which Urbatec fulfilled. (R 56) Thereafter on June 21, 1972, the Board of Supervisors of Respondent Yuma County, with knowledge of the said approvals by HUD and by The Authority, executed a Cooperation Agreement with HUD which provided, inter alia that Respondent would execute an Annual Contributions Contract to establish the financial arrangement for the project. (R 62) From June 1, 1972 through on or about November 10, 1972, Petitioner, The Authority and HUD worked closely together and diligently to complete the planning and deve-

lopment of the project, including the establishment of an agreed upon schedule for its completion. (R 65)

On November 8, 1972, The Authority resolved to withdraw its application for Turnkey public housing and on December 4, 1972, the Yuma Board of Supervisors concurred in such withdrawal and further resolved to reject the application "solely on the basis of site." (R 68) Urbatec brought suit against Yuma County in the United States Distict Court for the District of Arizona for breach of contract. Jurisdiction in the trial court was based upon diversity of citizenship. The District Court found that the rejection by the Board of Supervisors on December 4, 1972 was not based on site only, but was "an illegal and discriminatory act arising out of opposition on the part of Yuma citizens to having a low-income federally subsidized housing project to be occupied by persons qualified for federal housing subsidies including black or brown persons in the City of Yuma (R 68-69) and that said actions by The Authority and Respondent constituted a breach and repu-

diation of its contract with Petitioner" (R 69). Petitioner was awarded judgment against Respondent in the principal amount of $256,766.00 on July 12, 1976.

Respondent appealed said judgment and on January 14, 1980 the Court of Appeals for the Ninth Circuit reversed the District Court on the singular basis that Petitioner was required to be licensed as a contractor in Arizona before presenting a proposal in response to the invitation for proposals for the subject Federal Turnkey housing project and indicating by way of footnote that such holding could not frustrate any federal interest. (Appendix at p. 11)

Petitioner filed a Request for Rehearing and/or Rehearing en banc in January 25, 1980, and said Petition was denied on March 24, 1980. (Appendix pp. 13-14)

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it ignores the role of comprehensive federal regulations and guidelines that (1) have the force of law and (2)

govern the manner in which federally subsidized low-rent projects are to be considered and approved and the manner in which developer-contractors are to be determined to be qualified to build in the federal program. Previous Participation (Form 2530) Clearance Procedure for Low-Rent Public Housing, from Circular HPMC-FHA 7410.10 reflects the federal procedure under which Petitioner was determined to be qualified by HUD on the subject project. (Exhibit 5A)

To permit such a state statute to control the qualification procedure would not only interfere with the established procedures of HUD, which Congress has authorized to oversee the development of federally subsidized housing, but it will exclude qualified specialists in federal housing licensed in other states from submitting proposals to build federally subsidized projects without first qualifying for a local state license in that the local statute in the instant case requires as a condition of licensing that no bid has been submitted in Arizona within one year prior to applying. Ariz.

Rev. Stat. § 32-1122(B), supra. and one must be licensed to submit a bid. Ariz. Rev. Stat. § 32-1151, supra. (An out of state contractor would not be able to respond to an invitation such as the one in the within matter in all likelihood in that only 28 days lapsed from the date of invitation to the date of submittal. (R 3) In this 28-day period the developer-contractor is required under HUD requirements to submit the proposed site or sites, preliminary architectural designs and drawings, and cost projections. (R 3-5) (Exhibit 6))

The Arizona licensing statutes effectively precludes from competition in Arizona out-of-state contractors at the initial stage of any development requiring the presentation of competative bids or proposals, prior to the commencement of actual construction.

Federal housing law establishes a comprehensive scheme for federal involvement in the development of low rent public housing. Cuyahoga Metropolitan Housing Auth. vs. City of Cleveland, 474 F.2d 1102 (6th Cir., 1973). In 42 U.S.C. § 1401, there is a strong declaration of

federal interest in low-rent housing projects recognizing that there is a national need for federal involvement in this area. HUD, which regulates the low-rent housing program pursuant to 42 U.S.C. § 3534(a), has its congressional declaration of purpose clearly identified in 42 U.S.C. § 3531, to wit: "To assist the President in achieving maximum coordination of the various federal activities which have a major effect on urban community, suburban, or metropolitan development, to encourage the solution of problems of housing, urban development, and mass transportation through State, County, town, Village, or other local and private action, including promotion of interstate, regional, and metropolitan cooperation."

The Developers Handbook distributed to prospective developers and/or builders on the subject project (Exhibit 5A) required proposals to include: "A statement of the developer's and/or builder's qualifications and experience which shall include: 1. An outline of the proposed management framework, including lines of responsibility and authority. 2. A list

of key individuals, responsibility and authority, and a brief resume of experience and qualifications for HUD work. 3. A plan outlining rate of staffing the various disciplines. 4. Experience of the organization over past three years on similar Turnkey Work. 5. Schedule showing the tasks required to implement and complete the entire project and the milestones to be achieved at various intervals of time in order to complete the project in the period stipulated by the Proposer. 6. A statement of the financial position and ability to obtain interim financing."

HUD's Low-Rent Housing Turnkey Handbook of June, 1969, called a "HUD Handbook" and designated as RHA 7420.1 (Exhibit 5A) was also followed by Petitioner and other interested developers in the subject Yuma County housing project. These HUD regulations require open competition for prospective developers to become qualified under expressed and clearly defined federal guidelines without any requirements whatsoever to become licensed under <u>local</u> statutes. Page 1, Paragraph 1, Low-Rent Housing Turnkey

Handbook. (Exhibit 5A) On page 2 under No. 3 thereof entitled "Inviting Proposals" the text reads in subparagraph (a): "Proposals shall be publicly advertised with respect to all turnkey projects to insure that all interested parties have the opportunity to participate. In addition to meeting the advertising requirements, other methods of invitation may be used, such as solicitation of trade associations." Therefore, open and unrestricted invitations to prospective developers is basic to and is the stated policy of the federal housing program, and Urbatec was so invited to participate pursuant to this federal policy.

It is beyond disputing that comprehensive federal standards are employed in the final selection and approval of the developer-contractor by the federal agency involved. This evidences the strong federal interest in the selection of the developer-contractor and also evidences a difference in federal and state requirements in such selection. However, the Housing Authority of the County of Yuma did concur with the federal

authority, HUD, on the selection of Petitioner. The comprehensiveness of the federal scheme conflicts with any requirement of licensing by the State of Arizona in qualifying for and being selected as a developer and contractor in the federal low-rent housing program.

In Public Utilities Commission of State of California vs. United States, 355 U.S. 534, 78 S.Ct. 446, 2LEd 2d 470 (1958) the United States Supreme Court stated at 355 U.S. 542: "regulations adopted pursuant to federal statutes have the force of law." Thus, HUD regulations, which have been developed pursuant to federal statutes, have the force of law as to federally subsidized low-rent housing programs. (Neither Nothen vs. Elledge 72 Ariz. 166, 232 P.2d 111 (1951) nor Hunt vs. Douglas Lumber Co. 41 Ariz. 276 P.2d 815 (1933) used as authority in reversing the judgment of the trial court in this action involved contracts with the federal government.)

Miller vs. Arkansas 353 U.S. 187, 1 LEd 2d 231, 77 S.Ct. 257 (1956) involves a state licensing statute that obstructed federal interest, as in the present case.

In Miller, an unlicensed person in Arkansas submitted a bid in violation of Arkansas law for a federal government contract. The United States accepted the person's bid and the unlicensed person began work on the project. The person was fined and brought the action to court. The United States Supreme Court found that application of the Arkansas statute to this contractor interferred with the federal government's power to select contractors and schedule construction and was in conflict with the federal law regulating procurement. The quote at page 190 is particularly important: "Subjecting a federal contractor to the Arkansas contractor license requirements would give the State Licensing Board a virtual power of review over the federal determination of 'responsibility' and would thus frustrate the federal policy of selecting the lowest responsible bidder." The same harm arises from the lower court decision in this case in that the interest of the federal government in having open competition among developers-contractors specializing in the federal housing program and experienced in

compliance with the design requirements, cost allowance and federal procedures is frustrated. HUD made the final approval of the developer-builder on this project, selecting Petitioner. The imposition of the Arizona licensing statute negates the approach and goals of the federal housing program.

In Electric Construction Company vs. Flickinger 107 Ariz. 222, 485 P.2d 547 U.S. Cert. denied in 404 U.S. 952 (1971), the Arizona Supreme Court held that a California corporation, unlicensed in Arizona, who was a subcontractor and who performed work for a general contractor on an Air Force base in Tucson, Arizona, was not required to obtain the state contractor's license even though the government did not make a direct determination of the subcontractor's responsibility.

The Arizona Supreme Court stated: "Obviously, where the government makes a direct determination of a subcontractor's responsibility, Miller vs. Arkansas would be controlling; but where the federal government does not make a direct determiinaation, can the principal of the

case extend to a subcontractor to relieve him from complying with the state Law? We think so." supra at P. 548. The Court further stated at page 549: "It is not the fact that there may not be conflict concerning subcontractor's responsibility; it is the fact that there may be."

In Electric Construction, supra, the Court stated re the issue of conflict between the state and federal regulations: "Arizona's qualifications would result in the identical conflict which was found to frustrate the federal policy of selecting the lowest possible bidder whenever the government makes a direct determination of a prospective subcontractor."(supra, at p. 549)

As to determining congressional purpose and the issue of federal preemption, the case of Ray vs. Atlantic Richfield Company 435 U.S. 151, 55 LEd 2d 179, 98 S.Ct. 988 (1978) stated at page 157: "The congressional purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the state to

supplement it. . .or the act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. Likewise, the object sought to be obtained by the federal government and the character of obligations imposed by it reveal the same purpose." (Citations omitted.) In the above case, portions of the Washington Tanker Law were invalidated which required enrolled tankers to carry state-licensed pilots and which imposed state requirements on design and construction of tankers. The Supreme Court's language in 435 U.S. at page 158 is instructive: "Even if Congress has not completely foreclosed state legislation in a particular area, a state statute is void to the extent that it actually conflicts with a valid federal statute. A conflict will be found where compliance with both federal and state regulation is a physical impossibility . . .or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (Citations omitted.)

The statutes of California and Arizona are similar regarding licensing requirements of building contractors.

In Miller vs. Superior Court in and for the County of Pima, 8 Ariz. App. 420, 466 P.2d 699 (1968) the Arizona Court of Appeals stated at 702: "In the California statutory counterpart of our Section 32-1101, Section 7026, Anno Business and Professional Code, the definition of a contractor is almost identical in language to our definition." Thus, there are no significant differences between the licensing requirements in Calfifornia and those in Arizona and so the state purpose in this case would not seem to be substantial when compared to federal interests in obtaining the lowest and best housing development proposal under federal regulations and statutes. Each proposal is judged on site location, design, amenities, developer qualifications, and purchase price. To allow state licensing laws to preclude selection of an overall housing proposal that is otherwise acceptable under federal law would create a real obstacle to the federal program and defeat the

objectives of national policy. In contrast, allowing qualified and skilled contractors to participate in the federal housing program frustrates no state purpose in this regard since federal regulations are comprehensive and designed to protect the public. There is no adverse impact upon Arizona in making inapplicable its licensing provisions upon contractors who participate in federally funded housing programs. Under Sperry vs. Florida 373 U.S. 379, 10 LEd 2d 428, 83 S.Ct. 1322 (1963), such a minor incursion on the states power must give way to permit the substantial federal interest and program to proceed.

It even admitted in Appellant's briefs that new Arizona laws were passed to circumvent the ruling in Westinghouse Electric Corporation vs. Rhodes, 97 Ariz. 81, 397 P.2d 61 (1964).

The entire statutory scheme, including portions that predate Westinghouse, forbid a contractor from applying for an Arizona license if he has bid on a project in Arizona within one year prior to applying. Ariz. Rev. Stat. § 32-1122. Thus, an out-of state contractor who wins

a bid and then seeks to be licensed in Arizona to perform is precluded from obtaining a license. This constitutes an undue burden on interstate commerce. It is discriminatory against foreign state competition and therefore unconstitutional and void under the Commerce Clause. Polar Ice Cream vs. Andrews, 375 U.S. 361, 111 LEd 2d 389, 84 S.Ct. 378.

To avoid such interference with the goals and procedures of the housing program of the United States government and to attract competitive participation in the program among the maximum number of qualified builders, the petition for certiorari should be granted.

CONCLUSION

The petition for certiorari should be granted.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
Jan 14 1980

URBATEC, a California corporation, Plaintiff-Appellee,	
vs.	CA No. 76-3299
YUMA COUNTY, an Arizona County, Defendant-Appellant.	DC CIV No. 59 PHX

OPINION

Appeal from the United States District Court for the District of Arizona

Before: TRASK and HUG, Circuit Judges, and BOHANON,* District Judge

TRASK, Circuit Judge:

Plaintiff-Appellee Urbatec, a California corporation specializing in the development of subsidized housing projects, sued Yuma County, Arizona for

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*Honorable Luther L. Bohanon, United States District Judge for the Northern, Eastern & Western Districts of Oklahoma, sitting by designation.

breach of contract. Yuma County had invited proposals for the construction of 120 units of federally subsidized housing and tentatively accepted Urbatec's proposal by a letter dated June 14, 1972. Urbatec contends that this letter, together with Urbatec's proposal for the project, constitute a contract which was breached by Yuma County when, on November 10, 1972, it informed Urbatec that it should take no further action on the project. On December 4, 1972, the Yuma County Board of Supervisors formalized this decision by rejecting the project. As of December 4, 1972, Urbatec was not licensed as a contractor in Arizona, nor had it qualified as a foreign corporation doing business in Arizona.

The action was tried to the district Court sitting without a jury. Jurisdiction in the trial court was based upon diversity of citizenship. In its Findings of Fact and Conclusions of Law, that court concluded that the letter of June 14 did constitute a contract, that Yuma County breached that contract, and that Urbatec was damaged to the extent of $256,766 in expenses and lost profits.

The district court concluded that as of December 4, 1972, when Yuma County refused to proceed with the project, Urbatec was required neither to have a contractor's license, nor to have qualified as a foreign corporation doing business in Arizona. Judgment for Urbatec was entered on July 12, 1976, to the full extent of its damages.

Yuma County brings this appeal from the district court's judgment pursuant to 28 U.S.C. § 1291, raising a number of issues. Because we hold that Urbatec was required by Arizona law to have a contractor's license prior to submitting its proposal, we reverse.

I

Ariz. Rev. Stat. § 32-1151 provides in pertinent part:

> It is unlawful for a person, firm, partnership, corporation, association or other organization, or a combination of any of them, to engage in the business, act or offer to act in the capacity, or purport to have the capacity of a contractor without having his own license in his own name therefor as provided in this chapter,

unless the person, firm, partnership, corporation, association or other organization is exempt as provided in this chapter. (emphasis supplied).

The term "contractor" is defined by Ariz. Rev. Stat. § 32-1101 to mean:

> [A] person, firm, partnership, corporation, association or other organization, or a combination of any of them, who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith. (emphasis supplied).

These provisions have been construed as barring any suit to recover for services for which a license is required. Northen v. Elledge, 72 Ariz. 166, 232 P.2d 111 (1951); Hunt v. Douglas Lumber

Co., 41 Ariz. 276, 17 P.2d 815, 819-20 (1933). This bar on actions by unlicensed contractors has also be codified.[1]

Urbatec contends, however, that the licensing requirement is not applicable until actual construction commences, citing Westinghouse Electric Corp. v. Rhodes, 97 Ariz. 81, 397 P.2d 61 (1964). Urbatec's argument is unconvincing. In Westinghouse Electric, the court was concerned with a different statute, Ariz. Rev. Stat. § 32-1122, which sets forth

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1. Ariz. Rev. Stat. § 32-1153 provides in part:

> No contractor shall act as agent or commence or maintain any action in any court of the state for collection of compensation for the performance of any act for which a license is required by this chapter without alleging and proving that the contracting party whose contract gives rise to the claim was a duly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose.

the requirements for obtaining a contractor's license. One of those requirements, paragraph 3 of subsection B, § 32-1122,[2] disqualifies any contractor who "engaged in the contracting business without obtaining a license as required by this chapter within one year prior to making the application." The court in Westinghouse Electric concluded that "engaged in the contracting business" meant more than merely negotiating or submitting a bid. The court limited the meaning of the phrase to "acts of construction pursuant to an agreed undertaking." Westinghouse Electric, 397 P.2d at 63. Urbatec, however, can take no comfort from this holding. First, the statutes barring it from suing for damages are sections

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2. Ariz. Rev. Stat. § 32-1122 was repealed by Ch. 113, § 6 1975 Ariz. Sess. Laws. Section 32-1122 was reenacted by the 1975 act in an amended form so that subsection (E) of section 32-1122 now relates to the same subject matter as the earlier subsection (B) ¶3.

32-1101, 1151, and 1153, not section 32-1122. In fact, the court in Westinghouse Electric, in comparing the language of the statutory provisions, noted that the application of sections 32-1101 and 1151 was considerably broader than that of section 32-1122. Second, and more important, section 32-1122 was amended after the Westinghouse Electric decision to broaden its application and make it expressly applicable to contractors who do no more than submit a bid. See Chapter 66, H.B. 171 § 1, 1965 Ariz. Sess. Laws.[3]

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3. The legislature amended the pertinent provisions of Ariz. Rev. Stat. § 32-1122(B) ¶3 to provide:

> [A license applicant] . . . shall not have engaged in the contracting business nor shall he have submitted a bid within one year prior to making the application on any contracting work without first having been issued a license as required by this chapter.

Ch. 66 § 1 1965 Ariz. Sess. Laws (emphasis supplied).

Consequently, under Ariz. Rev. Stat. §§ 32-1101 and 1151, Urbatec violated Arizona law by submitting its proposal without first obtaining a contractor's license, as provided in section 32-1153, and, that violation precludes Urbatec from suing for compensation for its contracting services. The impact of that violation on Urbatec's ability to obtain a license during the ensuing year (the issue decided in Westinghouse Electric), is not relevant here since the contract is void ab initio. Hunt v. Douglas Lumber Co., supra. The inability of Urbatec to sue for compensation precludes not only actions grounded in contract, but those founded on a theory of promissory estoppel as well. Permitting Urbatec to recover on promissory estoppel grounds would circumvent the policies of the licensing statute.

> The purpose of licensing building contractors is for the protection of the public. Northen v. Elledge, 72 Ariz. 166, 232 P.2d 111 (1951). The legislature gave to the Registrar of Contractors the duty to require that those involved in constructions of

> structures and improvement to real property have the required skill, training and ability to accomplish such construction in a safe and workmanlike fashion.

Arnold Construction Co. v. Arizona Board of Regents, 109 Ariz. 495, 512 P.2d 1229, 1232 (1973).

In addition, the licensing statutes require insurance, Ariz. Rev. Stat. § 32-1122(B)(2), and surety bonds, Ariz. Rev. Stat. § 32-1152. All of these requirements, taken together, are designed to protect members of the general public without regard to the impact upon individual contractors. See Murphy v. Campbell Investment Co., 79 Wash. 2d 417,486 P.2d 1080, 1087-88 (1971) (Stafford, J., dissnting) (construing licensing statute substantially similar to Arizona's). Permitting Urbatec to recover on promissory estoppel grounds would circumvent these policies of protecting the public from unscrupulous, unqualified, or underinsured contractors.

In Northen v. Elledge, 72 Ariz. 166, 232 P.2d 111 (1951), an action was

brought on grounds of quantum meruit. The court held that action, instituted to recover the value of goods and services rendered, barred by the licensing statute, saying:

> It may be urged that the court should exercise its equitable discretion and permit the plaintiff recovery even in face of a specific prohibition in the statute on the ground that an unreasonable forfeiture would result. However, the statute requiring a contractor to possess a contractor's license before he may recover for work done was designed for the protection of the public and must not be defeated in order to accommodate one who has violated the provisions of the statute. Permitting an unlicensed contrator to recover on the ground that a loss would result to him otherwise would completely nullify the statute since every unlicensed contractor would sustain a loss or forfeiture unless he were allowed recovery. The remedy, if any, lies with the legislature. As the law stands, the court cannot countenance

such a result.

Northen, 232 P.2d at 116. Similarly, this court cannot approve a judgment in favor of Urbatec whether based upon contract or promissory estoppel. Urbatec's failure to obtain an Arizona contractor's license before submitting its proposal renders any agreement or promise void and no suit may be sustained thereon.[4] The judgment of the district court is REVERSED.

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4. It has been suggested that the Arizona Supreme Court's decision in Electric Construction Co. v. Flickinger, 107 Ariz. 222, 485 P.2d 547 (1971) renders the state licensing statutes inapplicable to Urbatec. We disagree. Unlike the contractor in Flickinger, Urbatec is not a subcontractor of the federal government, but a contractor of the State of Arizona. Applying the state licensing statute in this case could not frustrate any federal interest and would advance the state's proprietary interest in choosing its own contractor, as well as safeguard the public welfare. The

limited federal interest involved would be similarly advanced. There being no actual or potential conflict with federal interests, the Arizona licensing statutes are applicable to Urbatec.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

URBATEC, a California corporation, Plaintiff-Appellee, vs. YUMA COUNTY, an Arizona county, Defendant-Appellant.

Mar 24 1980

No. 76-3299

O R D E R

Before: TRASK and HUG, Circuit Judges, and BOHANON,* District Judge

The panel has voted unanimously to deny the petition for rehearing. Judge Hug has voted to reject the suggestion for rehearing en banc. Judges Trask and Bohanon recommend the rejection of the suggestion for rehearing en banc.

The full court has been advised of the suggestion for an en banc hearing, and no

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*Honorable Luther L. Bohanon, United States District Judge for the Northern, Eastern & Western Districts of Oklahoma, sitting by designation.

judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.